

KEYWORD: Guideline F

DIGEST: The Directive presumes a nexus between conduct or circumstances under any guideline and security clearance eligibility. The SOR is clear that the issue in this case arises from from one significant delinquent debt. Adverse decision affirmed.

CASENO: 14-05366.a1

DATE: 02/05/2016

DATE: February 5, 2016

In Re:)	
)	
-----,)	ISCR Case No. 14-05366
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On February 20, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On December 3, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge erred in concluding that Applicant’s circumstances raised concerns under Guideline F; whether the Judge erred in her findings of fact; whether the Judge failed properly to apply the whole-person concept; and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm the Judge’s decision.

The Judge’s Findings of Fact

Applicant has held a security clearance since 1997. His SOR alleges one debt, a mortgage account that is past due in the amount of \$12,323. The total amount of the loan balance is slightly over \$45,000. In 2006, Applicant purchased a vacant lot. He states that the bank gave him a “questionable loan” (Decision at 2), one that required monthly payments of \$300 for five years, concluding with a \$45,000 balloon payment. Applicant understood the terms and conditions of the loan agreement. When he completed his monthly payments, he was not able to make his balloon payment. About a year before the lump sum was due Applicant notified the bank that he would not be able to make the payment, but it refused to cooperate. He offered a settlement agreement, but the bank would not agree to it. Applicant’s monthly payments were made through an automatic payment plan. The bank stopped making automatic withdrawals. He consulted with a financial advisor and a legal counsel to pay off the loan. He contends that he has gone to extraordinary lengths to resolve this issue. However, he did not provide any documentary evidence to substantiate his efforts. He experienced unemployment from March 2007 to June 2008 but did not provide a nexus between this circumstance and his inability to make his balloon payment. Applicant noted that “people make mistakes.” *Id.*

The Judge’s Analysis

The Judge found that Applicant’s financial circumstances raised two Guideline F disqualifying conditions: 19(a): “inability or unwillingness to satisfy debts;” and 19(c): “a history of not meeting financial obligations[.]”¹ In concluding that Applicant had not mitigated these concerns, the Judge cited to evidence that he still owes the remaining \$45,000, precluding a finding that Applicant’s problems were past him. She noted his unemployment but reiterated her finding that he had established no nexus between that fact and his inability to pay his debt. She also noted the lack of documentary evidence regarding debt resolution. In the whole-person analysis, the Judge again

¹Directive, Enclosure 2 ¶¶ 19(a), (c).

cited to a lack of corroboration for Applicant's claims regarding his discussions with the bank over resolving the debt.

Discussion

Applicant denies that his financial problems show unwillingness or inability to pay his debts or that they constitute a history of not paying his debts. He states that he always pays his debts and that the SOR allegation addresses an anomalous circumstance. We construe this as an argument that his problems do not raise security concerns.

The Directive presumes that there is a nexus, or rational connection, between admitted or proven circumstances under any of its Guidelines and an applicant's security eligibility. *See, e.g.*, ISCR Case No. 14-04648 at 3 (App. Bd. Sep. 9, 2015). In this case, Applicant admitted his delinquent debt in his response to the SOR, and this debt is supported by substantial evidence as well. Applicant's acknowledged inability to pay a debt of \$45,000, which he has owed for several years, satisfies the requirements of 19(a). That Applicant has satisfied other debts, though relevant, does not undermine the Judge's analysis. *See, e.g.*, ISCR Case No. 02-04017 at 5 (App. Bd. Feb. 11, 2004) (The fact that security concerns arise from a single debt does not render a Judge's adverse decision erroneous). Applicant has not rebutted the presumption of nexus between his delinquent debt and his clearance eligibility.

Applicant argues that the Judge's continued reference throughout the Decision to this one debt may have been for the purpose of suggesting that there is more than one debt at issue. However, the SOR clearly states that Applicant's security concern arose from this one significant delinquent debt. The SOR contains no ambiguity and was sufficient to put a reasonable person on notice as to the facts and to the issues raised by Applicant's circumstances. *See, e.g.*, ISCR Case No. 14-03200 at 3 (App. Bd. Jul. 15, 2015). Therefore, the Judge's findings and analysis of the security significance of this debt were well within the scope of the SOR and were consistent with her duties under the Directive. The record does not support a conclusion that she raised concerns other than those fairly embraced by the SOR or that she improperly magnified Applicant's security concerns. To the extent that Applicant is arguing that the Judge was biased against him, we find nothing in the record that would likely persuade a reasonable person that the Judge lacked the requisite impartiality. *See, e.g.*, ISCR Case No. 14-03108 at 3 (App. Bd. May 20, 2015).

Applicant contends that the Judge erred in finding that he had stopped making payments on his loan. He states that, to the contrary, it was the lender who stopped deducting the payments. We have examined the Judge's findings on this matter and conclude that they are consistent with the record that was before her. She found that the lender stopped deducting the monthly mortgage payments, which was in accordance with the loan agreement, the terms and conditions of which Applicant understood. The Judge's material findings of security concern satisfy the requirement of the Directive for factual sufficiency. That is, they are "supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." Directive ¶ E3.1.32.1.

Applicant challenges the Judge’s treatment of the mitigating conditions. He notes that the crash of the housing market was a circumstance that was beyond his control. He also reiterates his claims to have been diligent in pursuing avenues of debt resolution. The Judge made findings about these matters. She reasonably stated, however, that Applicant had not corroborated his claims of responsible action regarding his debts.² She also stated that Applicant had not shown a connection between his unemployment and his inability to satisfy the balloon payment, which, again, was supported by the record. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-06093 at 3 (App. Bd. Dec. 4, 2015). His argument constitutes a disagreement with the Judge’s weighing of the evidence, which is not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016). We find no reason to disturb the Judge’s ultimate conclusion that Applicant had not met his burden of persuasion as to mitigation. Moreover, we conclude that the Judge’s application of the whole-person concept was consistent with the Directive, in that she evaluated Applicant’s circumstances in light of the entirety of the record evidence. *See, e.g.*, ISCR Case No. 14-02806 at 4 (App. Bd. Sep. 9, 2015).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. “The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* Directive, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”

Order

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

²Item 2, Answers to Interrogatories, contains a copy of a letter from Applicant to a mortgage lender, dated May 7, 2014, in which he requests “the establishment of a payment schedule in order to repay the remainder of our loan[.]” There is no documentary evidence regarding the lender’s response, nor is there documentary evidence of what Applicant may have been doing in the three previous years or in the time following to resolve the debt. This letter does not undermine the Judge’s findings about an absence of corroborating evidence.

Signed: James E. Moody _____
James E. Moody
Administrative Judge
Member, Appeal Board